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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/777,353

02/05/2001

Patrick Steven Cunningham

8134-A-1

5161

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10/02/2008

MESCHKOW & GRESHAM, P.L.C.

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EXAMINER

KARMIS, STEFANOS

ART UNIT

PAPER NUMBER

3693

MAIL DATE

DELIVERY MODE

10/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/777,353

**Applicant(s)**CUNNINGHAM, PATRICK  
STEVEN**Examiner**

STEFANOS KARMIS

**Art Unit**

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-10, 12-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 12-14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following communication is in response to Applicant's amendment filed 19 June 2008.

#### ***Status of Claims***

2. There are no amendments to the claims. Claims 8-10, 12-14 and 16 are currently pending.

#### ***Response to Amendment***

3. The declaration filed on 19 June 2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ingram and Whitney reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Ingram or Whitney reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

Specifically, Applicant claims that conception occurred on or about 12 June 2000. Applicant submits that on 14 June 2000 the invention was refined "on paper" by generating a Software Outline as noted in Exhibit A. Exhibit A teaches an application for payment software with builder setup, vendor setup, work item setup, project setup, lender setup, change order and

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application for payment, etc. However, Exhibit A fails to show conception of the invention as claimed in independent claim 8. For example, claim 8 is drawn to a method for obtaining a loan by transmitting information between a builder, a loan website (portal) and lender website and obtaining approval for a construction loan. Further claim 8 is particular to the manner in which information is transmitted by transferring the builder from the loan website to the lender for credit application approval and then the builder utilizing the loan website again for the construction loan. Instead, Exhibit A shows an application for payment and fails to teach the intricacies of claim 8. Further, Exhibit A fails to teach issuing construction loans or the idea of using a portal system. Therefore, Exhibit A, fails to show the requisite means and their interaction and instead appears to be more of a vague idea of how to solve a problem. Therefore, Exhibit A is insufficient to establish conception of the claimed invention. Exhibits B-O fail to establish conception as well. Therefore the declaration under 37 CFR 1.131 has been considered but is ineffective to overcome the Ingram and Whitney reference.

#### ***Response to Arguments***

4. Applicant's arguments, with respect to the rejection(s) of claim(s) 8-10, 12-14 and 16 have been considered but are not persuasive. Specifically Applicant argues that the instant application was conceived prior to the effective date of the Ingram and Whitney reference. However, as noted above, the Applicant's declaration under 1.131 was ineffective to overcome the references. Applicant provided no other arguments against the references. Therefore, the rejection is maintained as discussed in the previous office action.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingram et al. (hereinafter Ingram) U.S. Publication 2002/0077967 in view of Whitney U.S. Publication 2002/0111901 in further view of Florance et al. (hereinafter Florance) U.S. Patent 6,871,140.

Regarding independent claim 8, Ingram teaches an automated construction loan administration system in which a builder goes to its respective website and requests to apply for a loan (page 4, paragraph 0048). The builder submits a detailed description of the project plan and approving the construction loan (page 4, paragraph 0048). Ingram further teaches that once approved for the loan, the builder would take advantage of the dynamic draw request and performing the funding (page 5, paragraph 0049). Ingram fails to teach that the website contains a list of desired lenders, and in response to selection of a desired lender, automatically transferring the builder to a lender website for approval of the loan.

Whitney teaches a loan servicing system in which a loan servicing company receives and/or facilitates the submission of loan applications for credit from the client (page 3, paragraph 0023). The client must first seek approval with the loan servicing system (page 3, paragraph

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0023). The client the submits an application for credit, by the loan servicing company directing the client to the lending institution (page 3, paragraph 0024). The lending institution can be selected form a plurality of lending institutions and the lending institution decides whether to approve or deny the credit application (page 3, paragraph 0025-0026). Whitney fails to teach that the lender is selected by the client.

Florance teaches a system for facilitating mortgage lending in which lenders are listed and the borrow can click on a particular lender to submit information for loan pre-approval (column 46, lines 7-33). Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify teachings the construction loan teachings of Ingram to include the ability to leave a loan website and communicate directly with the lender as taught by Whitney and to have choosing the lender by the borrower as taught by Florance because it allows for processing and authorizing of the loan in an efficient and expedient manner by having direct communications between the lender and the borrower so that the borrower and lender can exchange specific information desired by a particular lender in a credit or approval application when approving a specific borrower.

Claims 9, Ingram teaches that the builders enters a username and password to access the loan website (page 4, paragraph 0048, see first column).

Claim 14, Ingram teaches accessing status reports on the construction project (page 5, paragraph 0049).

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7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ingram et al. (hereinafter Ingram) U.S. Publication 2002/0077967 in view of Whitney U.S. Publication 2002/0111901 in further view of Florance et al. (hereinafter Florance) U.S. Patent 6,871,140 in further view of Casper U.S. Publication 2002/0069151.

Regarding claim 10, Ingram in view of Whitney in further view of Florance teaches providing the borrower a username and password to access a loan website (page 4, paragraph 0048 of Ingram). However, Ingram in view of Whitney in further view of Florance fails to teach providing by the lender a username and password to the borrower upon approval. Casper teaches a buyer pre-approval method in which a lender analyzes borrower information and upon approval provides the borrower with a username and password for access to an auction website (paragraph 0020). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ingram in view of Whitney in further view of Florance to include the username and password teachings of Casper because it provides a manner for the borrower to access potential items that the lender would approve for the borrower.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 8 above, and further in view of Project Management.

Regarding claim 12, Ingram fails to disclose calculation of a budget/actual cost difference as either a surplus or deficit. Project Management discloses such a calculations at page 814 "Cost Variance" topic particularly. See also pages 813-830. It would have been obvious to one

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of ordinary skill in the art at the time of the invention to modify the prior art above to include consideration of calculated surplus/overrun (deficit) because it provides for controlling the budget and minimizing risk associated by controlling the surplus/deficit.

9. Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 8 above, in further in view of view of Pacifica.

Regarding claims 13 and 16, Ingram teaches draw processing (page 5, paragraph 0049). Ingram fails to teach obtaining properly signed waiver of lien and contractor affidavits from each entity associated with s specific work item and trade category within a construction project. Pacifica teaches waivers of liens and contractor affidavits (pages 3 and 7). It would have been obvious to one of ordinary skill at the time of the Applicant's invention to modify the teachings of Ingram in view of the prior art above to include such liens and affidavits to facilitate completion of financing processes for a construction project.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period



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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEFANOS KARMIS whose telephone number is (571)272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted  
/Stefanos Karmis/  
Primary Examiner, Art Unit 3693  
25 September 2008